

VZCZCXYZ0013
RR RUEHWEB

DE RUEHRA #0857/01 2921425
ZNR UUUUU ZZH
R 191425Z OCT 06
FM AMEMBASSY RIGA
TO RUEHC/SECSTATE WASHDC 3456
INFO RUCPDO/DEPT OF COMMERCE WASHDC
RUEATRS/DEPT OF TREASURY WASHDC

UNCLAS RIGA 000857

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E.O. 12958: N/A

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SUBJECT: Special 301 Out-of-Cycle Review Recommendation: Latvia

REF: 1) STATE 149667, 2) STATE 66966

¶1. (SBU) Summary: Latvia's performance since April 2006 on IPR-related issues shows continued improvement in the number of police raids conducted, amount of goods seized or destroyed, and IPR cases brought to prosecution. However, Latvia has not shown improvement in a number of areas that were highlighted in the 2006 Special 301 Report Notification, the most notable of which is the failure to implement penalties that would act as a deterrent to IPR crimes. While applauding Latvian advances, Post recommends that Latvia remain on the Special 301 Watch List for the upcoming cycle. End Summary.

¶2. (SBU) Pol-Econ Off received from the MFA copies of Latvia's submission to the USTR for the current Special 301 Out-of-Cycle Review. The Latvian government notes improvement in the first six to eight months of 2006 in the seizure of IPR-infringing material (5 million EUR worth in the first half of 2006, compared to 7 million EUR in all of 2005), the number of police raids per week (up from 3 per week in 2005, to 6-8 weekly this year), criminal cases initiated (92 cases to date this year, compared to 53 last year), and cases submitted to the Prosecutor's Office (32 in 2006, 19 in 2005).

¶3. (SBU) Additionally, the Justice Ministry's Deputy State Secretary, Laila Medin, stated that the government has presented to

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the Saeima (Parliament) amendments to the Civil Procedure Code and the Copyright Law that bring Latvian laws into compliance with EU directives on IPR protection and introduce civil ex parte search orders. She said the Saeima has not passed these revisions due to the recent elections, but should address the changes when the new Saeima is seated. Changes to these laws were mentioned as a goal for Latvia in the 2006 Special 301 Notification cable (reftel 2).

¶4. (SBU) However, in the Out-of Cycle Review period since April 2006, Latvia has shown little improvement in several key areas highlighted in Latvia's 2006 Special 301 Notification cable; namely deterrent sentencing, speed of judicial proceedings and prevention of internet-based copyright violations. The most notable short-coming is the continued lack of deterrent sentencing for IPR crimes. The Latvian government's submission to the USTR notes 14 convictions in the first 7 months of 2006, but none of these involved jail time for offenders. The 14 convictions resulted in 9 fines, 4 community service penalties and one suspended sentence. One industry group, The Coalition for Intellectual Property Rights (CIPR), stated that the statistics of the Latvian Prosecutor General Office shows that Latvian courts typically sentence offenders to only about one-tenth of the maximum fine that is allowed by law, and that to CIPR's knowledge, no defendant has ever received a prison sentence.

¶5. (SBU) The MFA's lead on IPR issues, Under Secretary of State Maija Monika, told Pol-Econ Off that she also is not aware of any IPR offender being sentenced to jail. She attributed this to the fact that IPR crimes are not viewed in Latvian society as serious offenses, and that judges reflect that common societal view when handing down sentences.

¶6. (SBU) Medin responded to the sentencing issue saying that the Justice Ministry is concerned that jail sentences may not be appropriate for many IPR offenders, as inmates often deepen their connection to criminal activities during times in prison. She said the Justice Ministry feels that community service or fines can be more effective in punishing IPR violations without putting the offender in a prison setting. Medin did not immediately have information on how much IPR offenders are currently fined or how many hours of community service they are sentenced to, though she will try to obtain such figures. Medin stated that the Justice Ministry's future sentencing goal would be to use a combination of jail time and probation, but such sentencing would require legislative changes (they can currently choose jail time or probation, but not a combination of the two) and may take two years to implement. When asked if she felt the sentencing in Latvia was a deterrent to IPR crimes, she stated that it is too early to tell, as the federal probation system is only three years old, with probation previously being handled at a municipal level. When asked if the judiciary views IPR crimes as serious, she replied yes, but added that that judges are in need of further training on the nature of IPR violations. Comment: It would be beneficial for Post and USTR to explore if there is an appropriate means/venue for the USG to assist in such judicial training.

¶7. (SBU) The 2006 Special 301 notification cable for Latvia also encouraged the GOL to improve the speed of judicial proceedings on IPR violations. CIPR states that law enforcement investigations remain slow, with cases of illegal factories manufacturing counterfeit cigarettes that are still technically under investigation since 2001. Medin said she will investigate if the Justice Ministry has statistics on the average length of prosecutions. CIPR also notes that the Economic Police lack essential equipment and internet access needed to prevent internet-based copyright violations, an area noted as in need of improvement in the 2006 Special 301 report notification.

¶8. (SBU) While applauding Latvia's improvements in seizures of goods and in initiating IPR-related criminal cases, the failure to implement deterrent sentencing that would clearly meet Latvia's TRIPS obligation is a continuing area of concern. Until the GOL can demonstrate that the current system of fines and community service contributes to creating an environment which reduces IPR violations, Post recommends that Latvia remain on the Special 301 Watch List for the upcoming cycle. We believe it is also important to note that the lack of deterrent sentencing in the IPR area also reflects a more generalized problem in the Latvian approach to law enforcement/prosecution, where suspended sentences, probation and small fines, as opposed to prison sentences, are common practice. The current shortcomings in the IPR arena thus reflect broader challenges to strengthening rule of law in Latvia's still young democracy.

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